

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARTIN DAVIS,

Petitioner,

v.

Case No. 08-13196  
Honorable George Caram Steeh

MARY L. BERGHUIS,

Respondent,

/

**ORDER DENYING PETITIONER'S "MOTION FOR EVIDENTIARY HEARING"**

Before the Court is Petitioner Martin Davis' "Motion For Evidentiary Hearing." (Docket #5.) For the reasons stated below, the motion is denied without prejudice.

If a habeas petition is not dismissed at a previous stage in the proceeding, the judge, after the answer and the transcript and record of state court proceedings are filed, shall, upon a review of those proceedings and of the expanded record, if any, determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the judge shall make such disposition of the petition as justice shall require. 28 U.S.C. foll. § 2254, Rule 8(a); *Hence v. Smith*, 49 F.Supp.2d 547, 549 (E.D. Mich. 1999) (Gadola, J.). It is within the district court's discretion to determine whether a habeas petitioner is entitled to an evidentiary hearing. *Brofford v. Marshall*, 751 F.2d 845, 853 (6th Cir. 1985). An evidentiary hearing is not required where the record is complete or if the petition raises only legal claims that can be resolved without the taking of additional evidence. *Ellis v. Lynaugh*, 873 F.2d 830, 840 (5th Cir. 1989); *United States v. Sanders*, 3 F.Supp.2d 554, 560 (M.D. Pa. 1998).

Here, the motion for an evidentiary hearing will be denied without prejudice because the Court has not yet received an answer or the state-court record from Respondent. Without these materials, the Court is unable to determine whether an evidentiary hearing on Petitioner's claims is needed. Following receipt of these materials, the Court will then determine whether an evidentiary hearing is necessary to resolve Petitioner's claims.

Accordingly, the Court **DENIES** Petitioner's "Motion For Evidentiary Hearing" [Docket #5], without prejudice. The Court will reconsider Petitioner's motion if, following receipt of the responsive pleading and Rule 5 materials, the Court determines that an evidentiary hearing is necessary.

Dated: August 25, 2008

S/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on  
August 25, 2008, by electronic and/or ordinary mail.

S/Marcia Beauchemin  
Deputy Clerk